

# SENATE BILL No. 74

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1; IC 8-1.5; IC 32-24-1-3; IC 32-24-2-5.

**Synopsis:** Acquisition of utility property. Provides that a municipality or a municipally owned utility may not purchase the property of a utility company that provides water or sewer service (including a regional sewer and water district) unless the utility regulatory commission (IURC): (1) finds that the utility company has continued violations of the IURC's orders or the law regulating the utility company after the IURC has ordered compliance; or (2) finds after a review that the utility company has severe deficiencies that the utility company has failed to remedy. Specifies that the statute prescribing the procedures for such findings by the IURC exclusively governs the acquisition of a water or sewer utility. Provides that if a municipality or a municipally owned utility has initiated proceedings under another statute before the effective date of this statute, the utility to be acquired may seek injunctive relief. Provides that a municipality or a public utility may not acquire any of the property of a rural electric membership corporation (REMC) without the consent of the REMC. Provides that, after a municipally owned utility withdraws from the IURC's jurisdiction, the IURC continues to have jurisdiction over the utility's rates and charges that are charged to customers located outside the municipality's boundaries. Requires the office of utility consumer counselor to represent such customers in rate cases.

**Effective:** Upon passage.

**Long**

January 9, 2006, read first time and referred to Committee on Homeland Security, Utilities, and Public Policy.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 74

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-2-92 IS AMENDED TO READ AS FOLLOWS  
2       [EFFECTIVE UPON PASSAGE]: Sec. 92. **(a)** Every license, permit,  
3       or franchise granted after April 30, 1913, to any public utility shall  
4       have the effect of an indeterminate permit subject to:

5       **(1)** the provisions of this chapter; and ~~subject to~~

6       **(2)** the ~~provisions that:~~ **following conditions:**

7       **(A)** The license, franchise, or permit may be revoked by the  
8       commission for cause. ~~or that~~

9       **(B)** The municipality may purchase the property of such public  
10      utility, as provided in this section. ~~Any such~~

11      **(b)** ~~This subsection does not apply to a utility company (as~~  
12      **defined in IC 8-1-30-2).** A municipality is authorized to purchase ~~such~~  
13      **the property of a public utility** and every such public utility is required  
14      to sell ~~such the public utility's~~ property at the value and according to  
15      the terms and conditions as provided in this chapter.

16      **(c)** ~~This subsection applies to a utility company (as defined in~~  
17      **IC 8-1-30-2).** A municipality or a municipally owned utility may



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1 not purchase the property of a utility company under this chapter.  
 2 A municipality or municipally owned utility may acquire a utility  
 3 company only under IC 8-1-30, in accordance with an order of the  
 4 commission issued under IC 8-1-30-5 after a finding by the  
 5 commission under IC 8-1-30-4.

6 (d) If this chapter ~~should be~~ is repealed or annulled, ~~then~~ all such  
 7 indeterminate franchises, permits, or grants shall cease and become  
 8 inoperative, and in place ~~thereof~~ **such of a particular indeterminate**  
 9 **franchise, permit, or grant, the utility holding the indeterminate**  
 10 **franchise, permit, or grant** shall be reinstated in the possession and  
 11 enjoyment of the license, permit, or franchise surrendered by such  
 12 utility at the time of the issue of the indeterminate franchise, permit, or  
 13 grant, but in no event shall such reinstated license, permit, or franchise  
 14 **may not** be terminated within a ~~less~~ period **less** than five (5) years from  
 15 the date of the repeal or annulment of this chapter.

16 SECTION 2. IC 8-1-2-92.5 IS ADDED TO THE INDIANA CODE  
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 18 UPON PASSAGE]: **Sec. 92.5. A municipality, a municipally owned**  
 19 **utility, or a public utility may not acquire any property of any of**  
 20 **the following corporations without the consent of the corporation:**

21 (1) **A rural electric membership corporation organized under**  
 22 **IC 8-1-13.**

23 (2) **A corporation organized under IC 23-17-1 that is an**  
 24 **electric cooperative and that has at least one (1) member that**  
 25 **is a corporation organized under IC 8-1-13.**

26 SECTION 3. IC 8-1-2-93 IS AMENDED TO READ AS FOLLOWS  
 27 [EFFECTIVE UPON PASSAGE]: Sec. 93. (a) **This section does not**  
 28 **apply to a utility company (as defined in IC 8-1-30-2).**

29 (b) Any public utility accepting or operating under any  
 30 indeterminate license, permit, or franchise granted after April 30, 1913,  
 31 shall by acceptance of any such indeterminate license, permit, or  
 32 franchise be deemed to have consented to a future purchase of ~~its~~ **the**  
 33 **public utility's** property, including property located in contiguous  
 34 territory within six (6) miles of the corporate limits of ~~such~~ **the**  
 35 **municipality in which the utility is located**, by the municipality in  
 36 which ~~such~~ **the** utility is located, at the value and under the terms and  
 37 conditions as provided in this chapter, and shall thereby be deemed to  
 38 have waived the right of requiring the necessity of ~~such~~ **the** taking to  
 39 be established by the judgment of a court, and to have waived all other  
 40 remedies and rights relative to condemnation, except such rights and  
 41 remedies as are provided in this chapter, and shall have been deemed  
 42 to have consented to the revocation of ~~its~~ **the public utility's** license,

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1 permit, or franchise by the commission for cause.

2 SECTION 4. IC 8-1-30-6 IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: Sec. 6. A municipality or other  
4 governmental unit may not require a utility company that provides  
5 water or sewer service to sell property used in the provision of such  
6 service to the municipality or governmental unit under IC 8-1-2-92,  
7 IC 8-1-2-93, or otherwise, unless the procedures and requirements of  
8 this chapter have been complied with and satisfied, **including a**  
9 **finding by the commission under section 4 of this chapter.**

10 SECTION 5. IC 8-1.5-2-2 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This chapter  
12 does not apply to utilities governed by IC 8-1-13 or IC 8-1-2 except for  
13 a municipally owned utility.

14 (b) The law relating to acquisition of electric utility property and to  
15 electricity suppliers' service area assignments shall be governed by  
16 IC 8-1-2.3 and IC 8-1-2-95.1, and nothing in this chapter modifies or  
17 abridges those provisions.

18 (c) **The law concerning the acquisition of a utility company (as**  
19 **defined in IC 8-1-30-2) by a municipality or a municipally owned**  
20 **utility is governed by IC 8-1-30. A municipality or a municipally**  
21 **owned utility may not acquire, purchase, or condemn the property**  
22 **of a utility company under this chapter.**

23 SECTION 6. IC 8-1.5-3-16 IS ADDED TO THE INDIANA CODE  
24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
25 UPON PASSAGE]: Sec. 16. (a) **This section applies to a municipally**  
26 **owned utility that has been taken out of the commission's**  
27 **jurisdiction.**

28 (b) As used in this section, "nonmunicipal customer" refers to  
29 a customer of a municipally owned utility if the customer receives  
30 services outside the boundaries of the municipality.

31 (c) **Notwithstanding other provisions of this article, the**  
32 **commission retains jurisdiction over a municipally owned utility's**  
33 **rates and charges that are charged to the municipally owned**  
34 **utility's nonmunicipal customers.**

35 (d) **The office of utility consumer counselor shall represent the**  
36 **interests of the nonmunicipal customers of a municipally owned**  
37 **utility in a case relating to the municipally owned utility's rates and**  
38 **charges.**

39 SECTION 7. IC 8-1.5-4-15 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) **Except as**  
41 **provided in subsection (g), if, upon investigation, the board finds:**

42 (1) that the waterworks, plant, system, or equipment is insufficient

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to furnish the necessary supply of water to properly protect the public health and welfare and safeguard the property within the waterworks district; or

(2) that it is necessary to rebuild, repair, extend, and improve the waterworks, plant, systems, and equipment and to acquire lands, **and** construct, erect, or acquire other plants, reservoirs, systems, and other structures and equipment appurtenant to them;

the board shall prepare maps, plans, specifications, and drawings with full details and descriptions for the proposed work, together with an estimate of the cost. The board shall also prepare a description of all property rights necessary to be acquired in connection with the proposed work and the manner in which the rights are to be acquired, whether by purchase or appropriation, along with a description of any other lands that may be injuriously affected, together with the estimated cost.

(b) The board shall then adopt a resolution:

(1) declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the waterworks district and the safeguarding of the property within the district;

(2) declaring that it is of public utility and benefit;

(3) appropriating the property described in the resolution;

(4) stating the maximum proposed cost of any land to be purchased; and

(5) adopting plans, maps, specifications, drawings, details, descriptions, and estimates.

(c) If the resolution is adopted, the board shall publish a notice in accordance with IC 5-3-1 of the adoption, the resolution, and the fact that plans, specifications, and estimates have been prepared and can be inspected. The notice must also name a date, not less than ten (10) days after the date of the last publication, when the board will receive or hear remonstrances from the persons interested in, or affected by, the resolution, and when it will determine their public utility and benefit. Notice shall be mailed to the owners of all lands appropriated by the resolution. If a landowner is a nonresident and ~~his~~ **the landowner's** place of residence is known, a notice shall be mailed to the nonresident owner. If the nonresident owner's residence is unknown to the board, then ~~he~~ **the nonresident owner** is considered notified of the pendency of the proceedings by the publication of notice.

(d) In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is a sufficient description of the property purchased or to be purchased, or to be appropriated or damaged, to give a description of the entire tract, whether it is one (1)

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or more lots or parcels and whether it is owned by one (1) or more persons.

(e) All persons affected by the proceedings, including all taxpayers in the waterworks district, are considered to be notified of the proceedings and all subsequent acts, hearings, adjournments, and orders of the board by the original publication of notice.

(f) The board may, before adoption of the resolution, obtain from the owners of the land an option for its purchase or may enter into a contract for its purchase after an appraisal by two (2) qualified land surveyors. Such an option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution.

**(g) The law concerning the acquisition of a utility company (as defined in IC 8-1-30-2) is governed by IC 8-1-30. The board may not acquire, purchase, or appropriate the property of a utility company under this section.**

SECTION 8. IC 32-24-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law. **However, IC 8-1-30 exclusively prescribes the procedures and requirements for the acquisition of a utility company (as defined in IC 8-1-30-2).**

(b) Before proceeding to condemn, the person:

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(d) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(e) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired if the property is taken for any purpose other than a right-of-way.

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SECTION 9. IC 32-24-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. If:

(1) a municipality has the power to acquire property under this chapter; or

(2) another statute provides for proceedings by a municipality for acquiring property under this chapter;

the board exercising those powers may proceed under IC 32-24-1 instead of this chapter. **However, IC 8-1-30 exclusively prescribes the procedures and requirements for the acquisition of a utility company (as defined in IC 8-1-30-2) by a municipality or a municipally owned utility.**

SECTION 10. [EFFECTIVE UPON PASSAGE] (a) **This SECTION applies to a municipality or a municipally owned utility that has initiated proceedings to acquire the property of a utility company (as defined in IC 8-1-30-2) by purchase, condemnation, or otherwise, before the effective date of this act.**

(b) **Notwithstanding IC 8-1-2-92, IC 8-1-2-93, IC 8-1-30-6, IC 8-1.5-2-2, IC 8-1.5-4-15, IC 32-24-1-3, and IC 32-24-2-5, all as amended by this act, if the municipality or municipally owned utility initiated the proceedings to acquire the utility company under any statute other than IC 8-1-30, as amended by this act, the utility company may, not later than thirty (30) days after the effective date of this act, appeal to a court that has jurisdiction in the county in which the municipality is located for an injunction preventing the municipality or municipally owned utility from continuing the proceedings under a statute other than IC 8-1-30, as amended by this act. The court shall promptly consider the appeal de novo and without a jury. If the court determines that IC 8-1-30, as amended by this act, applies to the acquisition of the utility company, the court shall order the relief sought and the municipality or the municipally owned utility may proceed to acquire the utility only after the procedures and requirements of IC 8-1-30, as amended by this act, have been complied with and satisfied.**

SECTION 11. **An emergency is declared for this act.**

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